



Control Number: 50014



Item Number: 23

Addendum StartPage: 0



DOCKET NO. 50014

**APPLICATION OF BIG WOOD
SPRINGS WATER SYSTEM FOR A
PRICE INDEX RATE ADJUSTMENT**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

COMMISSION STAFF’S RESPONSE TO ORDER NO. 8

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Response to Order No. 8 and would show the following:

I. BACKGROUND

On September 17, 2019, Big Wood Springs Water System (Applicant) filed an application for a rate adjustment under Texas Water Code (TWC) § 13.1872 and 16 Texas Administrative Code (TAC) § 24.49.

On October 23, 2019, the Administrative Law Judge (ALJ) issued Order No. 3 requesting clarification from Staff on the legal name of the Applicant and the issuance of a new tariff with the correct name, if applicable, by October 30, 2019. Staff requested and received two extensions to this deadline.

In its response to Order No. 3 filed on December 11, 2019, Staff indicated that it was unable to clarify the legal name of the utility in this docket and recommended that the Applicant withdraw its application until it could establish the legal name and ownership of the utility. In Order No. 6 filed on January 8, 2020, the ALJ requested that the Applicant file proof of ownership of the utility requesting a class D rate adjustment and provide the name of the utility that should be reflected on the tariff for the utility and certificate of convenience and necessity number (CCN) 12367. On February 6, 2020, the Applicant filed its response to Order No. 6.

Order No. 7 issued by the ALJ on April 9, 2020, directed Staff to files comments on the Applicant’s response on or by April 24, 2020, that include an analysis on sufficiency of the application. Staff filed a request for extension on April 23, 2020, and Order No. 8, issued on April 28, 2020, granted staff’s request to extend the deadline to May 1, 2020. Therefore, this pleading is timely filed.

II. OWNERSHIP OF THE UTILITY

Staff has reviewed the documents submitted by the Applicant and has concluded that CCN No. 12367 is held by the Estate of Patetreen Petty McCoy (Estate) with David Petty serving as the executor of the estate. The Applicant has established through documentation that Pat Petty d/b/a Big Woods Springs Water Company was initially granted CCN No. 12367 by the Texas Water Commission on September 5, 1990.¹ At some point between September 5, 1990 and July 24, 1998, Ms. Petty married James McCoy and took his last name. On July 24, 1998, Ms. Petty McCoy transferred an undivided one-half interest in the facilities of the Big Wood Springs water system to Mr. McCoy.²

Ms. Petty McCoy then passed away and her will was probated in Wood County on September 25, 2000.³ At this time, CCN No. 12367 came under the control of the Estate and Ms. Petty McCoy's undivided one-half interest in the facilities passed to her sons David Petty Rickey Petty, and James Petty.⁴ In 2001, James McCoy sold his undivided one-half interest to David, Rickey, and James.⁵ In 2018, Rickey and Jams sold their portion of the undivided one-half interest in the facilities to David.⁶

Under TWC § 13.301(h), a sale, acquisition, lease, or rental of any water or sewer system owned by an entity required by law to possess a CCN is void unless it is completed in accordance with section 13.301. The Applicant has not shown that any of the transfers of the undivided one-half interest in the Big Wood Springs water facilities, beginning with the transfer from Pat Petty McCoy to James McCoy, were carried out in accordance with the TWC § 13.301. Therefore, these transfers are void and the Estate owns 100% of the facilities.

Whether the Estate also holds the CCN due to the simple facts that: (1) the CCN was granted to Ms. Petty McCoy operating as a sole proprietor; and (2) Ms. Petty McCoy is now

¹ Applicant's Response to Order No. 6- Finding Application Insufficient and Requiring Response at 4 (Feb. 6, 2020).

² *Id.* at 6 - 7.

³ *Id.* at 8 - 15.

⁴ *Id.*

⁵ *Id.* at 16 - 19.

⁶ *Id.* at 20 - 22.

deceased, is a separate question.⁷ If the CCN did not pass to the Estate upon Ms. Petty McCoy's death, then Staff believes that an application for a sale, transfer, or merger (STM) from the Estate to David Petty is the most viable course of action to establish a new CCN holder for regulatory purposes. This transaction would also align the regulatory and legal status of the ownership of the Big Wood Springs facilities because the Applicant has provided bills of sale and deeds supporting the conclusion that David Petty is the legal owner of a 100% interest in the facilities. However, Staff recommends that a STM application from the Estate to David Petty may not be the best course of action at this time because the Applicant has informed Staff that is in negotiations to sell the system to a third party that is not David Petty.⁸

Based on the supplemental information provided by the Applicant, Staff recommends that the Applicant has established that the Estate of Patetreen Petty McCoy holds the CCN and owns the associated water facilities.

III. APPLICATION AND NOTICE

As detailed in the recommendation on administrative completeness and recommendation on final disposition and supporting memorandum of Spencer English filed on October 17, 2019, Staff recommends that the application be found administratively complete and accepted for filing under TWC § 13.1872 and 16 TAC § 24.49. Staff further recommends approval of the application and the proposed rates as also reflected in Mr. English's memorandum. Finally, Staff recommends that the notice proposed by the Applicant is sufficient except for the proposed effective date of October 30, 2019, which has now passed.

III. PROPOSED PROCEDURAL SCHEDULE

In the event that the ALJ determines that the processing of this docket may proceed, Staff proposes the following procedural schedule:

⁷ See 16 TAC § 24.245(c) ("A CCN or other order of the commission in any proceeding under this section does not create a vested property right").

⁸ Staff does not believe that requiring an STM from the Estate to David Petty followed by a second STM transferring the CCN and associated facilities to a third party promotes administrative efficiency or the conservation of Commission and utility resources.

Event	Deadline
Deadline for Applicant to provide notice to customers	At least 30 days before the effective date established in the Order approving or modifying Applicant's application. ⁹

IV. REQUEST TO RESTYLE THE DOCKET

If the ALJ concurs with Staff's recommendation regarding the ownership of the utility, Staff recommends that the docket be restyled as *Application of the Estate of Patetreen Petty McCoy for a Class D Annual Rate Adjustment*. This change will accurately reflect the correct name of the applicant as well as the fact that this application was filed after September 1, 2019. The current version of TWC § 13.1872, which no longer requires that a rate increase requested under that section be tied to a price index established by the Commission, was effective on September 1, 2019.

V. CONCLUSION

Staff respectfully requests an order consistent with the foregoing.

Dated: May 1, 2020

⁹ See 16 TAC § 24.49(e). After the Applicant receives a written Order by the Commission approving or modifying the Applicant's application, including the proposed notice of approved rates, and at least 30 days before the effective date of the proposed change established in the Commission's Order, the Applicant must send by mail, or by e-mail if the ratepayer has agreed to receive communications electronically, the approved or modified notice to each ratepayer describing the proposed rate adjustment.

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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DOCKET NO. 50014

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on May 1, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

s/ Kourtnee Jinks
Kourtnee Jinks